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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/557,047	04/21/2000	David J. Marsh	MS1-537US	7246

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EXAMINER

BOCCIO, VINCENT F

ART UNIT	PAPER NUMBER
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2616

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/557,047

Applicant(s)

MICROSOFT

Examiner

Vincent F. Boccio

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 27,29,31,33,35 and 38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28,30,32,34,36 and 37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION**

The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 2616.

**RESTRICTION BASED ON ORIGINAL PRESENTATION**

1. Newly submitted claims 27, 29, 31, 33, 35, 38 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

The claims are directed toward a methodology of establishing a user profile based on, "a rate at which the user consumes program information stored in the buffer", which the originally claimed invention is directed toward the apparatus and method of controlling programs to be recorded, recorded, played back and the establishment of a direction to treat the buffer in such as manner, like a shift register or a FIFO type operation.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 27, 29, 31, 33, 35, 38 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

**Claim Objections**

1. Claim objected to because of the following informalities:

{A} Claim 1, line 3, recites, "fist part", the examiner suggests, "first part".

Appropriate correction is required.

**Claim Rejections - 35 USC § 103**

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth

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in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1, 8-9, 17, 23, 25 & (new claims 26, 30, 34) are rejected under 35 U.S.C. 103(a) as being unpatentable over Browne et al. (WO 92/22983).

Regarding claims 1, 8-9, 17, 23 and 25, the examiner incorporates by reference the last action against the claims.

Regarding claims 1, 9 and 17, the claims as amended with respect to Browne, as deemed and understood by the examiner further inherently, if not obviously meets the limitations such as:

- storing at least one candidate program in a first part of the time dependent buffer arrangement (met by the Neural Network, which automatically selects programs for recording or events, based on a user profile, therefore, a first part is met by a memory, which stores the picked events to an event memory, automatically picked programs which are set events with respect to the NEURAL NETWORK 114, with an established user profile, see corresponding disclosure).

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The memory element would maintain the future events to act on till the event is accomplished, wherein upon recording the event will be logged into a table of contents of recorded programs in Fig. 6.

The memory element or first, second portion and even the programs stored, as understood can be read as acting like a shift register by upon performing the set event, when the event is completed, it is obvious if not inherent that the event would be removed from the memory, as an event, thereafter to be stored or identified in view of Fig. 6, stored programs.

Further upon a FIFO operation the table of contents or Fig. 6, of recorded programs, would also be treated as a shift register in FIFO mode by erasing the oldest, wherein it is inherent if not obvious that the memory would be updated upon erasure of a program {write over}, in view of when the system erases or writes over the oldest, it is obvious to update the table of contents to reflect what is available or not, for playback.

Further in view of above, a second part of a time dependent buffer arrangement, would also act as a FIFO/shift register, upon erasing/writing over the oldest or designated program, therefore, pushing the oldest from the buffer upon requiring space.

As further recited in the claim, reference above, Browne also renders inherent if not obvious, that the advancement of the first portion to the second is also met in view of:

- first part met by the NEURAL network event memory, wherein the advancement from the first to the second is met in view of storing events, to be accomplished, thereafter advanced to a second part represented by Fig. 6 to the table of contents of recorded programs, further upon requiring space can be FIFO-ed (Fig. 3, "301", FIFO option), just like the program material itself obviously including updating the table of contents, as the events are also obvious to drop, erase upon being accomplished.

To support the examiner position the examiner cites page 14, which states, "The stored program list contains a index of programs stored ... and held in the memory".

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Therefore, it is obvious that storage is done for recorded programs, with no mention of storing in Fig. 6, programs that have been erased.

Further, it is obvious that the event storage would also be flushed or transferred status to and meeting the limitation of a second part, met by identification of programs, first being future events, after, recorded events, as shown in Fig. 6, therefore, at least a status change of the programs from future events to recorded events, further upon erasure, obviously shift registering upon erasure, as is obvious to one skilled in the art, in view of:

Why would one maintain an event (first part), which the event has been accomplished and is part of the past??

Why also would one maintain a recorded program list (second part), for programs after erasure or a FIFO operation??

To further reinforce the examiner's position that it is obvious if not considered inherent, the examiner cites Fig. 6, which each event also is provided by a date, therefore, events are directly related to the date to record, which can be decided by the NEURAL network thereby providing auto-recording capability, with memory management to erase automatically, by setting the system to FIFO mode or even another erasure mode.

Regarding claims 26, 34, Browne also meets the limitation as recited wherein the user plays programs with respect to Fig. 6, thereafter, the system also provides for, according to Fig. 3, "ERASE OLDEST VIEWED PROGRAMS", therefore, based on the status associated with Fig. 6, "VIEWED FIELD", the system/intelligent content agent is further configured to automatically rearrange the initial or original time ordered sequence on a comparison of the recorded program information with at least a portion of the definable user selection criteria to produce a modified time ordered sequence, for erasure, by modifying the erasure criteria according to Fig. 3,

"ERASE OLDEST"

"ERASE OLDEST & VIEWED", also provides,

"ERASE ONLY SELECTED", therefore, user manipulated, as desired.

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Regarding claim 30, Browne further meets the limitation of wherein:

- playing is accomplished based on Fig. 6, and further upon being viewed and the option to erase oldest viewed, meets the limitation of changing the status or meeting the limitation of moving the status or pointers establishing a different status, which reads on storing in a third part, which is represented by changing the status or moving to a third part/status of the buffer or a change of the criteria for erasure.

4. Claims 2-7, 10-16, 18-22, (NEW claims 28, 32, 36-37) are rejected under 35 U.S.C. 103(a) as being unpatentable over Browne et al. (WO 92/22983) in view of Wood et al. (US 6,324,338).

Regarding claims 2-7, 10-16 and 18-22, the examiner incorporates by reference the last action against the claims.

Claim 28, 32, 36-37, are analyzed and discussed above with respect to Browne above.

Claims 32 is analyzed and discussed with respect to the analysis above, wherein even the user can select or add to the list of programs for erasure by selecting and changing the function of erasure to

"erase only selected programs", option (Fig. 3).

Claims 36-37 are analyzed and disclosed with respect to the claims above.

5. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Browne et al. (WO 92/22983) in view of Sumita et al. (US 6,581,207).

Regarding claim 24 the examiner incorporates by reference the last action against the claim.

It is noted that Browne and applicant, describe with different terminology/wording the operation of the system, it is the examiner's position that Browne, renders obvious if not inherent, the recited claim language applied thereto above, as understood and interpreted by the examiner.

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***Conclusion***

2. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

**Contact Fax Information**

Any response to this action should be mailed to:  
Commissioner of Patents and Trademarks  
Washington, D.C. 20231

or faxed to:

(703) 872-9314, (for formal communication  
intended for entry)

or:

(703) 308-5359, (for informal or draft  
communications, please label "PROPOSED" or  
"DRAFT")

Hand-delivered responses should be brought to  
Crystal Park II, 2121 Crystal Drive,  
Arlington, VA., Sixth Floor  
(Receptionist).

**Contact Information**




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1. Any inquiry concerning this communication or earlier communications should be directed to the examiner of record, Monday-Thursday, 8:00 AM to 5:00 PM Vincent F. Boccio (703) 306-3022.

Any inquiry of a general nature or relating to the status of this application should be directed to Customer Service (703) 306-0377.

Primary Examiner, Boccio, Vincent  
7/24/04

  
VINCENT BOCCIO  
PRIMARY EXAMINER